Supreme Court, U.S.
FILED
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No. 10-989

In the Supreme Court of the United States

TALAL ELIAS CHAHINE,
AKA DAVID CHAHINE, AKA DANNY CHAHINE,
Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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January 31, 2011

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QUESTIONS PRESENTED

The court of appeals for the Sixth Circuit denied a petition for review of the immigration judges denial of section relief from removal under 18 U.S.C. § 1182(c) repealed 1996. The Sixth Circuit stated that it does not have jurisdiction to review the discretionary denial of the immigration judge.

One question presented:

Are US citizen family members who are assisting the US military in Iraq considered to be family ties in the United States for the purposes of obtaining 18 U.S.C. § 1182(c) relief from removal?

OPINIONS BELOW

The Order of the United States Court of Appeals for the Sixth Circuit issued June 4, 2010, the decision of the Board of Immigration Appeals issued August 28, 2009, and the decision of the U.S. Immigration Judge issued November 14, 2007, are unreported.

STATEMENT OF JURISDICTION

The Sixth Circuit's opinion was rendered on June 4, 2010. Rehearing was denied on November 2, 2010.

This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V:

> No person . . . shall be deprived of life, liberty, or property, without due process of law;

8 U.S.C. § 1182(c):

> Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful relinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General ...

STATEMENT OF THE CASE

Petitioner Talal Chahine native and citizen of Lebanon was denied his application for waiver of inadmissibility under section 212(c) of the Immigration and Nationality Act formerly codified at 18 U.S.C. § 1182(c) repealed 1996. Various positive and negative equities were discussed during his immigration proceedings. Family ties is one of the important factors to consider. Unfortunately, he only has one family member who is a United States citizen. However, this family member was serving as a contractor assisting the US military in Iraq. The immigration judge found that this type of family ties is the *de minimis* since he is not in the United States but is assisting the US military in Iraq. Petitioner seeks the US Supreme Court to review whether family members who are technically not within the United States because they are assisting the US military in Iraq can be considered a positive equity or not. The immigration court the Board of Immigration Appeals and the Sixth Circuit Court of Appeals is of the opinion that this form of family tie is *de minimis* because the individual is not in Iraq.

REASONS FOR ALLOWANCE OF THE WRIT

The writ may be allowed if the court of appeals has decided an important federal question. In this case, the court of appeals permitted the immigration judge to use his "discretion" and hold that individuals who have family assisting the US as a contractor in Iraq is a *de minimis* family tie because they are not in the United States and therefore cannot be considered to have sufficient family ties to warrant relief from removal in the United States. Petitioner submits that absurd

reasoning such as this is an abuse of discretion which violates his due process rights.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 09-4122

[Filed June 4, 2010]

TALAL ELIAS CHAHINE, aka David Chahine, aka Danny Chahine,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

ORDER

Before: NORRIS, McKEAGUE, and WHITE, Circuit Judges.

Talal Chahine, a native and citizen of Lebanon, seeks review of a decision of the Board of Immigration Appeals that denied his application for a waiver of inadmissibility under § 212(c) of the Immigration and Nationality Act, formerly codified at 8 U.S.C. § 1182(c) (repealed 1996). In his brief on the merits, Chahine argues that the immigration judge ("IJ") and the Board

of Immigration Appeals abused their discretion in denying him relief. The respondent moves to dismiss this appeal under 8 U.S.C. § 1252(a)(2)(B) and (C). Chahine responds in opposition to the motion, and the respondent has replied.

Chahine was admitted to the United States in 1979 and later adjusted his status to a legal permanent resident. In 1989, he pled guilty in a Michigan court to two counts of possession of cocaine. Chahine was naturalized in 1990. In 1997, his naturalization was revoked, and he entered a guilty plea to unlawful procurement of citizenship in violation of 18 U.S.C. § 1425 because he did not disclose his criminal record. Removal proceedings were initiated based on Chahine's conviction for a controlled-substance offense. The IJ ordered Chahine's removal, but the Board remanded because the decision was not properly memorialized.

Upon remand, Chahine sought relief under § 212(c). The IJ determined that Chahine was not eligible and again ordered his removal. On appeal, the Board again remanded for entry of a new decision regarding the basis for deportability. The Board further held that Chahine was eligible to apply for relief under § 212(c).

The IJ entered a written decision on November 14, 2007, concluding that Chahine was removable under § 241(a)(2)(B)(i) of the Act, 8 U.S.C. § 1227(a)(2)(B)(i), based on his controlled-substances conviction. Further, the IJ considered Chahine's application for relief under § 212(c) and denied the application. Chahine appealed to the Board, challenging only the denial of § 212(c) relief. The Board affirmed the IJ's decision and dismissed the appeal. That decision is now on review.

The statutory provision for judicial review limits this court's jurisdiction to review of certain orders. Thus, "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section . . . 1227(a)(2) . . . (B) . . . of this title . . . ." 8 U.S.C. § 1252(a)(2)(C). In turn, § 1227(a)(2)(B) provides that an alien is deportable "who at any time after admission has been convicted of a violation of . . . any law or regulation of a State . . . relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana . . . ." That section strips this court of jurisdiction to review the order of removal, although the court may review whether a conviction falls within a statutory bar. *Nwagbo v. Holder*, 571 F.3d 508, 510 (6th Cir. 2009); *Patel v. Ashcroft*, 401 F.3d 400, 406 (6th Cir. 2005). Chahine, however, has not challenged the determination that he is removable, either before the Board or in his brief to this court. And although the court retains jurisdiction to review "constitutional claims or questions of law," 8 U.S.C. § 1252(a)(2)(D), Chahine has not stated any such issues with respect to the determination that he is removable for his convictions.

The respondent also argues that review of the Board's exercise of discretion in denying a § 212(c) waiver is not within this court's review. Regarding discretionary decisions,

> [n]otwithstanding any other provision of law . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security

> the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of [asylum].

8 U.S.C. 1252(a)(2)(B)(ii). This section bars review only of determinations declared to be discretionary by statute, not by regulation. *Kucana v. Holder*, ___ U.S. ___, 130 S.Ct. 827 (2010). A § 212(c) waiver, which under the statutory language was committed to the "discretion of the Attorney General," would appear to fall within the bar on review by § 1252(a)(2)(B)(ii).

Chahine does not dispute the proposition that the discretionary denial of a § 212(c) waiver is not reviewable. Rather, he asserts the presence of legal error. No provision "which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals . . . ." 8 U.S.C. § 1252(a)(2)(D).

But upon consideration of the arguments that Chahine raises in his brief and in response to the motion to dismiss, we conclude that the petition must be dismissed. His argument that the IJ gave inappropriate weight to the positive and negative factors is a challenge to the IJ's and Board's exercise of discretion in evaluating the evidence. Chahine also takes issue with the IJ's characterization of his family ties as *de minimis*. Notwithstanding that characterization, however, the IJ did not misstate the facts of Chahine's family circumstance. Likewise, Chahine's arguments that the IJ inappropriately relied on arrests is also an argument that essentially challenges the weight to be given the evidence and is

within the exercise of discretion. Finally, to the extent that he asserts that the IJ was obliged to provide an Arabic translation of legal terms such as "arrest" and "conviction," we note that this argument was never presented to the Board. An issue must be raised to the Board, or it will be deemed to have been waived. *Khalili v. Holder*, 557 F.3d 429, 432-33 (6th Cir. 2009). We therefore conclude that this petition must be dismissed.

The respondent's motion to dismiss is **GRANTED**.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A026 475 751 - Detroit, MI Date: AUG 28 2009

In re: TALAL ELIAS CHAHINE a.k.a. David Chahine a.k.a. Danny Chahine

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Marshal E. Hyman, Esquire

ON BEHALF OF DHS: Michael B. Dobson
Senior Attorney

CHARGE:

Order: Sec. 241(a)(2)(B)(i), I&N Act [8 U.S.C. § 1251(a)(2)(B)(i)]-
Convicted of controlled substance violation

Sec. 241(a)(2)(A)(i), I&N Act [8 U.S.C. § 1251(a)(2)(A)(i)] -
Convicted of crime involving moral turpitude (not sustained)

Lodged: Sec. 241(a)(1)(G)(i), I&N Act [8 U.S.C. § 1251(a)(1)(G)(i)] -
Obtained admission to the United States with an immigrant visa procured on the basis of a marriage entered into less than 2 years prior to such admission, which was judicially annulled or terminated within 2 years of any such admission, and, therefore, considered to have procured the immigrant visa by fraud (not sustained)

Sec. 241(a)(1)(G)(ii), I&N Act [8 U.S.C. § 1251(a)(1)(G)(ii)] -
Refused to fulfill marital agreement, which, in the opinion of the Attorney General, was made for the purpose of obtaining admission as an immigrant, and, therefore, considered to have procured the immigrant visa by fraud (not sustained)

APPLICATION: Section 212(c) waiver of inadmissibility

The respondent, a native and citizen of Lebanon, appeals from the Immigration Judge's November 14, 2007, decision denying his application for a waiver of

inadmissibility under former section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c) (1994). The respondent's request for oral argument is denied, 8 C.F.R. § 1003.1(e)(7) (2009), and the respondent's appeal will be dismissed.

On appeal the respondent argues that the Immigration Judge committed reversible legal error in denying his application for a waiver of inadmissibility under former section 212(c) of the Act in the exercise of discretion (I.J. at 18-20; Respondent's Br. at 7-13).[1] *See Matter of Marin*, 16 I&N Dec. 581 (BIA 1978); *Matter of Buscemi*, 19 I&N Dec. 628 (BIA 1988); *Matter of Edwards*, 20 I&N Dec. 191 (BIA 1990); *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991); *Matter of Coehlo*, 20 I&N Dec. 464 (BIA 1992); *Matter of Burbano*, 20 I&N Dec. 872 (BIA 1994); *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995). However, we affirm the Immigration Judge's decision for the reasons stated therein. *See* 8 C.F.R. § 1003.1(e)(5); *see also INS v. Abudu*, 485 US. 94, 105 (1988) (recognizing that Board may deny application for relief on solely discretionary grounds).

To address the respondent's arguments on appeal, we disagree with the respondent that the Immigration Judge impermissibly invoked several arrests that did not culminate in convictions in the course of balancing the respondent's respective equities and adverse factors as required in the exercise of his discretionary authority to grant or deny the respondent's application for 212(c) relief (I.J. at 18-19; Respondent's Br. at 8-9).

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[1] It is not in dispute (and thus not at issue on appeal) that the respondent is otherwise eligible for 212(c) relief (I.J. at 18).

See Billeke-Tolosa v. Ashcroft, 385 F.3d 708, 712-13 (6th Cir. 2004); *Matter of Arreguin, supra*, at 42. Contrary to the respondent's position on appeal, *Matter of Arreguin, supra*, does not stand for the proposition that the adjudicator of an application for 212(c) relief may never take arrests not culminating in conviction into account in the exercise of discretion; rather, in that case we stated that "we are hesitant to give *substantial weight* to an arrest report, absent a conviction *or corroborating evidence* of the allegations contained therein." *Id* (emphasis added). In this case, the respondent provided corroborative testimony detailing the circumstances of the arrests (I.J. at 9-10, 18-19; Respondent's Br. at 5-6). In addition, the Immigration Judge, at least in part, relied not so much upon the fact of the arrests, as he relied upon the respondent's "attempt[] to conceal other run-ins with the law from this Court (I.J. at 19)." Thus, we conclude that the Immigration Judge gave an appropriate amount of weight to the respondent's arrest record under the circumstances of this case.

Otherwise the respondent argues that the Immigration Judge overstated the severity of the respondent's criminal history and that the Immigration Judge, therefore, improperly balanced the positive and negative factors presented in support of the application for relief under former section 212(c) of the Act (I.J. at 18-20; Respondent's Br. at 9-13). With respect to the respondent's allegation that the Immigration Judge gave too much weight to the respondent's criminal history, we note that the Immigration Judge specifically found that the respondent's criminal history was not so severe as to require a showing of "unusual or outstanding equities" (I.J. at 19). *See Matter of Edwards, supra*, at 195-96;

Matter of Buscemi, supra, at 634-36. We agree with the weight accorded the respondent's criminal history.

In addition, the respondent alleges that the Immigration Judge should have given more weight to current country conditions in Lebanon as a positive discretionary factor (Respondent's Br. at 11). However, the Immigration Judge considered this factor and gave it the appropriate weight in view of the lack of evidence in the record of proceeding establishing any connection between the respondent and the dangerous aspects of the current country conditions in Lebanon as reported in the respondent's documentary country conditions evidence (I.J. at 20; Exh. 3R).

Finally, the respondent has invited us to consider numerous unpublished Board decisions granting 212(c) relief to aliens convicted of drug violations (Respondent's Br. at 12 n. 3). However, each case is different as to the positive and negative factors that are present. Accordingly, the following order will be entered:

ORDER: The respondent's appeal is dismissed.

/s/
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DETROIT, MICHIGAN

File No: A26-475-751 November 14, 2007

In the Matter of:)
CHAHINE, Talal) **In Deportation Proceedings**
)

Charges: Section 241(a)(2)(3)(i) of the Immigration and Nationality Act ("INA" or "Act"), as amended — convicted of a violation of a law relating to a controlled substance.

Section 241(a)(2)(A)(i) of the Act, as amended — convicted of a crime involving moral turpitude committed within five years of entry and for which a sentence of one year or more could have been imposed.

Section 241(a)(1)(G)(i) of the Act, as amended by § 308(f)(1)(L) of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") — obtained admission into the United States with an immigrant

visa procured on the basis of a marriage entered into less than two years prior to such admission, and which was judicially annulled or terminated within two years subsequent to any admission.

Section 241(a)(1)(G)(ii) of the INA, as amended by IIRIRA — failed or refused to fulfill your marital agreement which in the opinion of the Attorney General was made for the purpose of procuring your admission as an immigrant.

Application: Relief Under § 212(c).

ON BEHALF OF RESPONDENT
Marshal E. Hyman, Esq.

ON BEHALF OF THE GOVERNMENT
Michael Dobson
Assistant Chief Counsel

DECISION AND ORDERS OF THE COURT

I. BACKGROUND

Respondent is a 47-year-old male, native and citizen of Lebanon. On February 3, 1979, respondent was admitted to the United States as a student. He subsequently married Margree Ruff, a United States citizen, and adjusted his status to that of lawful permanent resident on February 16, 1983. See Exhibit 10. Since his adjustment, respondent has visited Lebanon and reentered the United States as a lawful

permanent resident on three occasions, returning on September 8, 1985, August 3, 1986, and October 31, 1986. See Exhibit 4R.

On November 7, 1989 in the Sixth Circuit Court, Pontiac Michigan, respondent pleaded guilty to two counts of possession of cocaine under 25 grams under Mich. Comp. Laws § 333.7403(2)(A)(v). See Exhibit 4. Respondent was sentenced to 24 months of probation on January 11, 1990. Id.

On May 18, 1990, respondent naturalized and became a United States citizen. On January 8, 1997, respondent was convicted of unlawful procurement of naturalization under 18 U.S.C. § 1425(a) for lies told on August 18, 1988 and May 18, 1990. Id. Respondent's naturalization was then revoked on January 8, 1997. Id.

The Government commenced proceedings against respondent on March 24, 1997 by filing an Order to Show Cause ("OSC"), charging respondent under §§ 241(a)(2)(B)(i) and (A)(i). See Exhibit 1. On September 18, 1997, the Court, presided over by the Honorable John F. Walsh, found that all factual allegations and the charge under § 241(a)(2)(B)(i) had been sustained. The Court found that the charge under § 241(a)(2)(A)(i) had not been sustained. Respondent appealed to the Board of Immigration Appeals ("Board"), and the Government cross-appealed. However, the Government later withdrew its cross-appeal. As the Court's findings were not properly memorialized in a memorandum summarizing its oral decision, the Board remanded the case to the Court on September 14, 1998 for the preparation and inclusion in the record of a separate decision.

Following the remand, respondent submitted an application for relief under § 212(c), asserting eligibility based on INS v. St. Cyr, 533 U.S. 289 (2001). See Exhibit 4R. The Government also submitted an I-261 Additional Charges of Inadmissibility/ Deportability, changing the date of respondent's conviction to the date he was sentenced, January 11, 1990. Respondent admitted the new allegation. On January 4, 2004, the Court, presided over by the Honorable John A. Duck, issued an order finding respondent ineligible for relief under § 212(c), but failing to address the charges of deportability. On August 22, 2003, the Board found respondent was eligible to apply for relief under § 212(c). The Board remanded the case to the Court to address respondent's deportability, which had still not been resolved, and to consider respondent's application for relief.

On December 5, 2003, respondent appeared before the Court for a master calendar hearing before the Honorable Elizabeth A. Hacker. The Court requested the parties submit briefs on the unresolved issues and a stipulated statement of facts before the individual hearing. Respondent submitted a proposed stipulated statement of facts, and the Government submitted its response to each of the proposed stipulations. See Exhibits 1R, 2R.

Respondent's individual hearing, at which respondent testified, was held on March 20, 2007 before the undersigned. At the close of respondent's hearing, the Government filed a second I-261 Additional Charges of Inadmissibility/Deportability, alleging that respondent obtained his adjustment to immigrant status based on his marriage to Margree

Ruff on November 5, 1982 and that their marriage was judicially annulled or terminated on April 20, 1983. The Government charged respondent as deportable under both §§ 241(a)(1)(G)(i) and (ii). Respondent requested a continuance in light of the additional charges.

On June 18, 2007, respondent filed a motion to terminate the additional charges of deportability under §§ 241(a)(1)(G)(i) and (ii) of the Act, asserting that the Government waived its right to lodge additional charges, the new charges violate respondent's due process rights, and the charges cannot be sustained. Moreover, respondent requested discovery in the event that the charges were not terminated. The Court issued an order on August 1, 2007, denying respondent's requests for discovery and reserving its decision on the matters relating to the new charges until its decision on the merits.

A second individual hearing was held on August 30, 2007, at which respondent also testified.

II. POSITIONS OF THE PARTIES

The Government alleges respondent is deportable under § 241(a)(2)(B)(i) for his conviction relating to a controlled substance, as previously found by the Court, and under § 241(a)(2)(A)(i), despite the Court's prior ruling. The Government further alleges respondent is deportable under §§ 241(a)(2)(G)(i) and (ii) because he procured his adjustment through his marriage and the marriage lasted less than two years, and his marriage was entered into for the purpose of procuring his immigration status. The Government asserts that because respondent procured his lawful permanent

residency through fraud, he is not a lawful permanent resident and thus is ineligible for relief under § 212(c). Finally, the Government argues that even assuming respondent is eligible for relief under § 212(c), respondent does not merit relief in the exercise of discretion.

Respondent contends the Government has not sustained its burden to show deportability under § 241(a)(2)(B)(i) because the date the Government alleged in the OSC as respondent's date of conviction was actually the date respondent pleaded guilty, not the date of sentencing. Respondent contends that the Court should terminate the Government's marriage fraud charges, as the Government waived the charges and as the Government's delay in filing such charges constitutes a violation of respondent's due process rights. Respondent asserts that even if the Government is permitted to proceed with its charges, the Government has not sustained its charges. Respondent argues that under the pre-IIRIRA version of the statute, the presumption of marriage fraud applies only if an entry is obtained using a visa procured through a marriage entered into within the previous two years and within two years after the entry the marriage is terminated. As respondent's adjustment was not an entry, the facts of respondent's case do not trigger the presumption. Respondent argues that the Government has failed to submit sufficient evidence to demonstrate that the marriage was fraudulent. Respondent finally asserts that even if he is deportable under § 241(a)(2)(B)(i), he is eligible for relief under § 212(c) and should be granted such relief in the exercise of discretion.

III. LEGAL STANDARDS

Former § 212(c) of the Act provides that an alien lawfully admitted for permanent residence who temporarily proceeds abroad voluntarily and not under an order of deportation, and who is returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted to the United States in the discretion of the Attorney General despite the applicability of certain grounds of exclusion specified in INA § 212(a). This waiver was expanded to be available to lawful permanent residents who did not proceed abroad, but risked losing their lawful permanent resident status due to charges of deportability or removability. See Matter of Silva, 16 I&N Dec. 26 (BIA 1976).

In addition to establishing statutory eligibility for a § 212(c) waiver, the applicant also bears the burden of demonstrating that his application merits a favorable exercise of discretion. See Matter of Marin, 16 I&N Dec. 581, 584-85 (BIA 1978). Each case must be judged on its own merits and both adverse and positive factors should be considered. Id.; Matter of Edwards, 20 I&N Dec. 191, 196 (BIA 1990). Adverse factors may include the existence of a criminal record and its nature, recency, and seriousness; the nature and underlying circumstances of the ground leading to removal and additional significant violations of the immigration laws; and other evidence indicative of the alien's bad character or undesirability as a lawful permanent resident. Matter of Marin, 16 I&N Dec. at 584-85. Positive factors include family ties within the United States, a residence of long duration in this country, hardship to the alien and his family if he is deported, property ownership or business ties,

demonstrated value and service to the community, genuine rehabilitation if a criminal record exists, and any other evidence attesting to the alien's good character. Id. The severity of adverse factors in a particular case may require the alien to introduce additional offsetting favorable evidence which may involve "unusual" or "outstanding" equities. Id.; see also Matter of Edwards, 20 I&N Dec. 191, 196 (BIA 1990); Matter of Buscemi, 19 I&N Dec. 628, 633 (BIA 1988) (the gravity of the offense *per se* must be examined). An alien who demonstrates unusual or outstanding equities merely satisfies the threshold test for having a favorable exercise of discretion considered. See Matter of Buscemi, 19 I&N Dec. at 634. Such demonstration does not compel that discretion be favorably exercised. Id.

IV. EVIDENCE OF RECORD

A. Testimony of Respondent

Respondent testified that his name is Talal Chahine; however, when he applied for naturalization, he changed his name to Danny Chahine and has used the name Danny since that time. He was born in Lebanon on June 12, 1960. He came to the United States on a student visa on February 3, 1979. Respondent attended the University of Detroit and Wayne State University. He did not graduate, but continued to attend school until after he married in 1981. Respondent does not remember why he stopped going to school.

Respondent obtained his lawful permanent residency through his marriage to his first wife, Margree Ruff. He believes they married in 1981 and

thinks they were married for about two years. Respondent married a second time in 1996 to a woman named Jackie. They were married for one year. He was subsequently engaged, but the engagement ended due to respondent's immigration case.

Respondent's only family in the United States is his brother. However, his brother has been in Iraq for the last three years working as an interpreter for the American army. Respondent indicated that he had submitted pictures of his brother in Iraq that his brother had mailed him. See Exhibit 3R, Tab U. Respondent further stated that he wanted to go with his brother, but he could not. Respondent initially stated he has no family in Lebanon. He later testified he has a half-sister in Lebanon, but he has not had any contact with her for the last fifteen years because they do not get along. He has one aunt in Lebanon, but also has no contact with her due to the difficulties of communicating with her in Lebanon.

Respondent owns his home with his brother and has lived there for the last fifteen years. They each pay half of the $1300 mortgage each month. Respondent has owned a business, Motor City Jewelry, with his brother in Oak Park for seven or eight years. The business buys, sells, and repairs jewelry. Since his brother has been gone, respondent has been running the business by himself. It does not have any employees, and respondent had to close the business to come to Court. Respondent takes a weekly draw of about $500, as well as any profits the business has earned at the end of the year. Respondent does not work outside of the business. Respondent also owns one car.

Respondent works at the store from 10:30 a.m. to 8:00 p.m., Monday through Saturday. On Sunday, he cleans the store and does odd jobs that were not completed during the week. After work he spends time with friends or goes to the casino. He testified his life is on hold waiting for his immigration case.

Respondent returned to Lebanon in August 1979 to visit. He also returned in 1981. Respondent got stuck there for about eleven months due to the war. Respondent obtained a new student visa and returned to the United States in 1981 or 1982. Respondent left for the United States right away after receiving his student visa. He returned again in 1986, after his parents were killed. When asked about a 1985 trip back to Lebanon, respondent stated he could not remember if his parents died in 1985 or 1986. They were killed by Hezbollah. Respondent believes Hezbollah targeted them because they were Catholics and respondent's grandfather was a landowner. Hezbollah hoped to intimidate the Christian community into leaving. Respondent believes he was last in Lebanon in 1990 for less than a month to visit his aunt and sister. Respondent's impression of Lebanon was that it continues to be violent.

Respondent testified he has never been in trouble with the law outside the United States. He was arrested in the United States for possession of cocaine. Respondent purchased some cocaine to bring to his girlfriend. Respondent went to court in Oakland County and pleaded guilty to possession. He was sentenced to two years probation. He satisfied the terms of his probation including visiting his probation officer every month and taking drug tests. Respondent testified he was next arrested after he applied for

citizenship. Respondent failed to disclose his criminal case when applying for naturalization. Respondent testified that he knew his conviction was pending, and did not disclose his criminal proceedings because he did not think that is what the question referred to. He then stated that he did not tell the officer about his arrests and conviction when he was interviewed because he believed he would not get his citizenship otherwise. Respondent was sentenced to two years probation and lost his citizenship. He satisfied the terms of his probation with no problems. He stated he was not in trouble after that conviction, with the exception of maybe four speeding tickets. He claimed he had no other arrests.

When asked if he was arrested a second time for drugs, respondent stated it was probably true. When asked if it was a Wayne County arrest, respondent said he was arrested in Wayne County first, but the case was dismissed. Respondent stated that if the police report says the police found marijuana when they arrested him, it must be true. Respondent claimed it was not true that he threw two plastic bags out of the window when the police came to his house or that he had three different packets of cocaine. Respondent testified that he did not remember if he was charged with possession of cocaine, if the judge suppressed the evidence at the hearing, or if the judge's decision was reversed by the court of appeals. Respondent claimed his criminal case did not go forward because the police captain was fired due to lying and planting evidence. Respondent stated the case was not dropped because he was facing charges in Oakland County. Instead, he said it was because they did not have any evidence.

When asked at his second individual hearing regarding any arrests that did not result in convictions, respondent stated he was arrested two other times – once in the Wayne County case (as discussed above) and a second time in Oakland County. Drug charges were filed against respondent after his second Oakland County arrest, but the prosecutor dismissed the case as a result of respondent's plea in his other Oakland County case. When asked about whether his Wayne County case was pending after his arrest, respondent indicated that the case was currently pending. Respondent stated he has not been arrested since his naturalization conviction.

Respondent stated he was very sorry his convictions happened. He apologized for all the problems he has caused the United States Government. He testified that he is not breaking the law anymore. He was young and foolish when he was convicted. He came to the realization that he had to straighten his life up and behave himself, which he did. He is no longer involved with drugs and does not drink alcohol regularly.

Respondent testified he also was a witness in a murder trial. He was dating a woman (who he later learned was actually a man) who told him that she and her aunt had killed her aunt's husband. He reported it to the police. The police wired respondent to record the statements of the woman respondent was dating. Respondent also testified, resulting in one woman being convicted and sentenced to twenty years imprisonment. The other woman died.

When asked on cross-examination about his first marriage, respondent stated he believed he was married to Margree Ruff for two years, but he did not remember. Respondent stated he did not have any children with Margree and did not know why. When asked when Margree was born, respondent stated it was 1955. Respondent said Margree was African American. He did not know her parents' names, but knew she came from Mississippi and had no family in this area. Respondent testified that although he is a Catholic, they were not married in the church because they could not afford a wedding, as respondent was still a student. They married in court in Farmington, Michigan. Respondent testified that they married on November 5, 1982. Respondent did not remember how long after the marriage they separated. He testified that the marriage broke up because they could not live together. Respondent did not remember who filed for divorce or whether they separated before one of them filed for divorce. He believed they were separated for a week to two weeks before the divorce. Respondent stated he adjusted his status about three months after the marriage. He did not remember how long the marriage lasted after his adjustment. Respondent agreed that he was divorced on April 20, 1983, as he indicated in his application. Respondent stated he did not pay his wife anything to file papers for him. When asked whether he had any evidence that the marriage was bona fide, such as evidence of commingling of assets, respondent stated they did not have much money. Respondent testified that they were boyfriend and girlfriend and lived in the same apartment. They were together for about two years. Respondent stated it was impossible to prove this because its been twenty years since the marriage.

Respondent stated he does not want to go back to Lebanon because he has been in the United States for twenty-seven years and does not know how to live in Lebanon anymore. He loves the United States and feels like an American. Also, he believes Hezbollah or Shiite militias will find out that his brother is working for the Americans in Iraq, and they will kill respondent.

At his second individual hearing, respondent testified he met his first wife in 1983. They lived in the same apartment complex and met in the parking lot. They then started dating. Later, he moved into Margree's apartment. About six months after respondent moved in, they got married. Respondent testified that they got married because they thought they fell in love, although he now thinks it was mostly sexual attraction. Respondent did not remember when or where they married. Respondent later testified that they married in Oakland County, using a friend's address as their residence, because it is easier to marry there. Respondent stated Margree was older than he. At first, they were happy. Then they started fighting about sex and whether to go out or stay in. They divorced after one and a half years of marriage. They lived together for a total of two and a half years. Respondent has no pictures of his first wife because his second wife ran all his pictures through the garbage disposal in their kitchen sink. Respondent does not know where his first wife is now. He last saw her a day or two after they got divorced.

When respondent and Margree went for respondent's adjustment interview, Margree went with him and was interviewed separately. He was asked for proof that his marriage was bona fide, and respondent

stated he submitted proof, but cannot remember what he submitted. He was unable to locate any proof in the packet submitted by the Government regarding his adjustment. See Exhibit 14R, for identification. Respondent then identified Margree's signature on his application and her writing on the affidavit of support. He also identified a letter from his wife's employer listing her married name.

Respondent did not know if his first wife had been married before they were married or had used any other name. Respondent believed she had been married before based on the divorce decree submitted by the Government, which listed a different last name for Margree. See Exhibit 13R. Respondent further stated that they married in Farmington, while the divorce decree states that they got married in Pontiac. Respondent believes Margree divorced him, and he received a paper in the mail regarding divorce proceedings. Respondent stated he went to school with another Lebanese man also named Talal Chahine who owns La Shish, a Middle Eastern restaurant. Respondent does not know where this man is or what his wife's name is.

V. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Deportability Under § 241(a)(2)(B)(i) and (A)(i)

Respondent asserts the Government did not sustain its burden to demonstrate deportability under § 241(a)(2)(B)(i) of the Act because respondent was charged as convicted on the date he pleaded guilty, instead of the date he was sentenced. On September 18, 1997, the Court sustained the factual allegation,

finding the respondent was convicted on November 7, 1989, as a conviction can include the mere finding of guilty. Under pre-IIRIRA law, an individual is considered convicted if "the court has adjudicated him guilty or has entered a formal judgment of guilt" regardless of whether any punishment or sentence was entered. Matter of Ozkok, 19 I&N Dec. 546, 551 (BIA 1988). Respondent's Judgment of Sentence states, "THE COURT FINDS that defendant was found guilty on November 7, 1989 . . . ." Therefore, November 7, 1989 was not merely the date the respondent entered a plea, but the date, as determined by the court, of the court's formal judgment of guilt. Therefore, the Court finds the Government has sustained factual allegation 10 in the OSC, which states that respondent was convicted on November 7, 1989.[1]

As the Court sustained respondent's charge of deportability under 241(a)(2)(B)(i) of the Act in its September 18, 1997 order, but failed to explain its reasoning, the Court will now detail its reasoning regarding the charge. The Government submitted certified copies of respondent's record of conviction, indicating he was found guilty on November 7, 1989 of

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[1] Additionally respondent's argument is made moot by his own admissions in the course of the deportation proceedings. On December 17, 1999, the Government filed an I-261 after the case was remanded, changing the factual allegation to state that respondent was convicted of two counts of possession of cocaine on January 11, 1990, the date respondent was sentenced. At a hearing on October 1, 2001, respondent admitted this factual allegation Moreover, the parties again stipulated to the facts of respondent's conviction in the Stipulated Statement of Facts. See Exhibit 1R. Therefore, respondent's argument regarding the date of conviction has been rendered moot.

two counts of possession of cocaine under 25 grams in violation of Mich. Comp. Laws § 333.7403(2)(a)(v) and was sentenced to 24 months of probation on January 11, 1990. See Exhibit 4. As possession of cocaine under Mich. Comp. Laws § 333.7403(2)(a)(v) is a law relating to a controlled substance, as defined by § 102 of the Controlled Substances Act, the Government demonstrated respondent's deportability by clear and convincing evidence.

The Government further asserts that the Court should sustain respondent's charge of deportability under § 241(a)(2)(A)(i). In its September 18, 1997 order, the Court found that the charge had not been sustained. The Government appealed the Court's decision, but later withdrew its appeal. Generally, a remand is effective for consideration of all matters, unless specifically limited. See Matter of Patel, 16 I&N Dec. 600, 601 (BIA 1978). However, the Court may not revisit an issue previously decided unless additional evidence is presented that is material, was not previously available, and could not have been discovered or presented at the former hearing. See Matter of M-D-, 24 I&N Dec. 138, 141-42 (BIA 2007). The Government has submitted no additional evidence and simply requests the opportunity to relitigate the issue after waiving its right to appeal the issue. As the Government has not complied with the standard set forth in Matter of M-D-, the Court will not revisit the issue. Therefore, the charge of deportability under § 241(a)(2)(A)(i) is not sustained.

B. Deportability Under INA §§ 241(a)(1)(G)(i) and (ii)

Respondent asserts that the additional charges of deportability under INA §§ 241(a)(1)(G)(i) and (ii)

should be terminated because the Government waived its right to bring additional charges and the new charges violate respondent's due process rights. While the Court acknowledges the inherent difficulty in defending against charges based on events that occurred almost a quarter of a century ago, the regulations allow the Government to file additional charges of deportability at any time during deportation proceedings. 8 C.F.R. § 1003.30. Moreover, respondent's arguments essentially amount to a request for estoppel against the Government. Although the Board has not yet decided whether an estoppel claim against the Government may lie, it has indicated that any such claim must be supported by evidence of affirmative misconduct by the Government. Matter of Truong, 22 I&N Dec. 1090, 1092 (BIA 1999). Respondent's unsupported claim of the Government's "intentional strategy to surprise [respondent] with stale accusations" is insufficient to meet his heavy burden of demonstrating affirmative misconduct, particularly as the Government's actions are explicitly authorized by regulation. Therefore, the Court will not terminate the additional charges of deportability.

Nonetheless, the Court finds that the Government has failed to sustain the charge under INA § 241(a)(1)(G)(i). The Government has charged respondent under § 241(a)(1)(G)(i), as amended by IIRIRA. However, as respondent was already in deportation proceedings on IIRIRA's effective date, the amendments made by IIRIRA to § 241(a)(1)(G)(i) do not apply to respondent, IIRIRA, Pub. L. 104-208, § 309(c)(1), 110 Stat. 3009 (1996). Therefore, the pre-IIRIRA version of INA § 241(a)(1)(G)(i) states that a visa is considered to have been procured by fraud if:

> the alien obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws
> . . . .

Respondent entered the United States on August 23, 1981 as a student. He then married on November 5, 1982 and adjusted his status on February 16, 1983. His adjustment is not an entry, as defined by 101(a)(13) of the pre-IIRIRA Act. Although the Government submitted what purports to be respondent's divorce complaint and divorce judgement, the documents list a different last name for respondent's wife and a different date and place of marriage. See Exhibit 13. As it could not be established with any degree of certainty that this evidence actually relates to respondent, respondent's date of divorce remains uncertain. However, respondent admitted he was only married for a year and a half, although he listed his divorce date as April 20, 1983 as part of his application for relief. See Exhibit 4R. His next entry was on September 8, 1985, as a lawful permanent resident after an almost three-month trip to Lebanon. See Id. This was the first entry respondent procured based on the status he obtained through his marriage, and it was less than two years after he was married. Therefore, the sole issue is whether respondent's divorce occurred within "two

years subsequent to any entry of the alien . . . ." While the statute does not specify whether the term "any entry" refers back to the same "any entry" obtained with a visa procured on the basis of a marriage entered into within the previous two years, this appears to be the only logical interpretation. Otherwise, a statutory presumption of marriage fraud could be triggered by entries obtained using a visa procured by means entirely unrelated to the marriage. Such a broad application of the statutory presumption has never been adopted by the Board and would thwart Congress's purpose of identifying marriages in which marriage fraud could reasonably be suspected. Therefore, respondent's entry date as a student is irrelevant to the analysis under § 241(a)(1)(G)(i). As respondent's divorce occurred before and not "subsequent" to his September 8, 1985 entry (or for that matter any other entry obtained as a lawful permanent resident), the Government has failed to demonstrate that the statutory presumption of marriage fraud applies.

Furthermore, the Government has failed to establish respondent's deportability under § 241(a)(1)(G)(ii). The Government asserts that respondent's marriage was entered into for the purpose of procuring immigration benefits based on the following facts: 1) respondent married a woman eleven years older than him who was not Lebanese; 2) they did not marry in the church; 3) they had no children; 4) the marriage ended shortly after respondent adjusted his status; and 5) respondent does not remember the date of the marriage or exactly how long it lasted. The Government further attacks respondent's credibility based on his misrepresentation of his residence on his marriage

license, his conviction for failing to disclose his criminal conviction on his application for naturalization, and respondent's failure to mention his additional arrests when asked about them. While the Government notes respondent's failure to present objective evidence showing a commingling of property or joint evidence, the Government, not respondent, bears the burden of demonstrating clearly and convincing that respondent's marriage was entered into for the purpose of procuring immigration benefits. The evidence presented is speculative at best and is simply insufficient, under the facts and procedural posture of this case, to carry the Government's burden. Therefore, the Court will not sustain the charge under § 241(a)(1)(G)(ii). Moreover, as respondent did not acquire his lawful permanent resident status through fraud, he retains his lawful permanent resident status and eligibility to apply for relief under § 212(c).

C. Relief Under § 212(c)

As respondent is statutorily eligible for relief under § 212(c), the only issue is whether he merits such relief in the exercise of discretion. Respondent has resided in the United States since 1979 and has been a lawful permanent resident since 1983. Respondent's assets include a house and a business, both of which he co-owns with his brother. The business has no employees other than himself. Respondent also owns a car. Respondent's only family in the United States is his brother, who is a United States citizen. However, his brother has been in Iraq for the last three years working for the American military. Respondent has a half-sister and aunt in Lebanon. Although respondent indicated Lebanon is unstable and he fears being targeted by Hezbollah if he returned to Lebanon due to

his brother's connection with the American military, he presented no corroborating country condition information indicating that similarly situated individuals with relatives working with the American military are targeted, and the presence of his half-sister in Lebanon further undermines his claim. Respondent presented no evidence of community ties. He did demonstrate that he assisted with a murder investigation and testified as a witness at the trial, resulting in a conviction.

Respondent was convicted of two counts of possession of cocaine under 25 grams in 1990. He was also convicted of unlawful procurement of naturalization for twice lying about his criminal history, and his citizenship was revoked. When asked whether he had any other arrests, respondent forgot to mention two other drug arrests, despite the fact that one of them resulted in lengthy litigation. He then admitted he was also arrested in Wayne County on drug charges, but the case was not pursued because the police had no evidence. He later stated that the Wayne County case was still pending as of the date of his last individual hearing. He also stated he had a second drug case in Oakland County, but it was dismissed as a result of his plea bargain. Respondent's evasiveness in failing to initially disclose these arrests undercuts his credibility. Respondent has had no criminal history after his 1997 naturalization conviction. He expressed remorse for his actions and attributed his mistakes to youthful foolishness. He indicated that he no longer uses drugs.

After considering all positive and adverse factors, the Court finds respondent does not merit the exercise of discretion. He engaged in a pattern of criminal drug

activity, then lied about his activities to procure naturalization, and attempted to conceal other run-ins with the law from this Court. While respondent has not engaged in criminal activity since these proceedings began in 1997, respondent admitted he still has a pending drug case resulting from his Wayne County arrest. This ongoing litigation regarding his criminal drug charges undercuts his claim of rehabilitation. The Court finds respondent's criminal history is a significant adverse factor. While respondent's criminal history is not so severe as to require a showing of unusual or outstanding equities, his positive equities in the United States are minimal and are limited primarily to his property ties, his lengthy residence, and his laudable assistance in a murder investigation and trial in 2000-2001. Additionally, his family ties in the United States are *de minimis*. Respondent has United States citizen brother, but respondent has been separated from his brother for the last three years, as his brother is in Iraq. Moreover, respondent has family including a half-sister and aunt in Lebanon. While respondent may fear the current civil unrest in Lebanon, there is no evidence that respondent will be targeted for harm or that general conditions in Lebanon are so dangerous that his return would be a hardship. In sum, respondent's limited positive equities do not outweigh his criminal history. Therefore, the Court will deny respondent's application for relief under § 212(c).

ORDERS

IT IS HEREBY ORDERED that respondent's application for relief under § 212(c) is DENIED.

IT IS FURTHER ORDERED that the charges against respondent under §§ 241(a)(2)(A)(i), 241(a)(1)(G)(i), and 241(a)(1)(G)(ii) are NOT SUSTAINED.

IT IS FURTHER ORDERED that respondent be deported from the United States to Lebanon under § 241(a)(2)(B)(i) of the Act.

/s/
Robert D. Newberry
U.S. Immigration Judge

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 09-4122

[Filed November 2, 2010]

TALAL ELIAS CHAHINE, aka David Chahine, aka Danny Chahine,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

O R D E R

Before: NORRIS, McKEAGUE, and WHITE, Circuit Judges.

In a prior order, we granted the respondent's motion to dismiss this petition for review of an order of the Board of Immigration Appeals that affirmed the denial of an application for a waiver of inadmissibility. We concluded, based on the petitioner's brief and the record, that our review was precluded because of statutory jurisdictional bars and because the Board's

decision rested wholly on the exercise of its discretion. The petitioner now seeks rehearing, arguing that he raised issues of law and fact for review.

Upon review and consideration, the petition for rehearing is **DENIED**. Fed. R. App. P. 40.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk